



**STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
REAL ESTATE APPRAISER COMMISSION
500 JAMES ROBERTSON PARKWAY, SUITE 620
NASHVILLE, TENNESSEE 37243
615-741-1831**

**March 12, 2006
Room 640, Davy Crockett Tower**

The Tennessee Real Estate Appraiser Commission met March 12, 2006, at 8:40 a.m. in Nashville, Tennessee, at the Davy Crockett Tower in Room 640. Chairman Marc Headden called the meeting to order, and the following business was transacted.

COMMISSION MEMBERS PRESENT

Luther Bratton
Marc Headden
William R. Flowers, Jr.
Sam Pipkin
James E. Wade, Jr.
Dr. Richard Evans
Jason West
John Bullington

COMMISSION MEMBERS ABSENT

STAFF MEMBERS PRESENT

Nikole Urban, Administrative Director
Bethany Heuer, Staff Attorney

ADOPT AGENDA

The commission voted to adopt the agenda. Dr. Evans made the motion to accept the agenda and it was seconded by Mr. Bullington. Motion carried unopposed.

MINUTES

The February 2007 minutes were reviewed. Mr. Wade made the motion to accept the minutes as written. It was seconded by Mr. Bullington. Motion carried unopposed.

NEW BUSINESS

The Commission members were concerned about a possible continuance request from one of the respondent's scheduled for a formal hearing in April. There was discussion as to the ability of the Commission to deny a request for a continuance. After much discussion, Mr. Flowers made a motion to table this discussion until Legal Counsel could find the appropriate reference as to whether the Commission or the Judge decides the matter of continuance. Mr. Bratton seconded the motion. The motion carried with a vote of five to one, with Mr. Bullington voting "no" to this matter. Later in the day, Bethany Heuer, staff legal counsel, brought in the appropriate reference from 4-5-301 conduct of contested cases (b) "it is the duty of the administrative judge or hearing officer to preside at the hearing, rule on questions of the admissibility of evidence, swear witnesses, advise the agency members as to the law of the case, and ensure that the proceedings are carried out in accordance with the provisions of this chapter, other applicable law and the rules of the respective agency. At no time shall the administrative judge or hearing officer hearing a case with agency members under subsection (a) take part in the determination of a question of fact, unless the administrative judge or hearing officer is an agency member. An administrative judge or hearing officer shall, upon the judge's or the officer's own motion, or timely motion of a party, decide any procedural question of law." The Commission was satisfied by this finding.

APPLICANT CONFERENCES

Ann Adkins attended the Commission meeting to request approval of the demonstration reports that she has completed and to continue to gather experience hours in this fashion. The Commission voted to allow the experience credit for the previously obtained 1744 hours of demonstration appraisal reports; however, the remaining 756 hours towards a certified residential designation must be appraisals that are not demonstration reports, but are appraisals completed for actual clients. The motion to approve this recommendation was made by Mr. Flowers. Mr. Bullington seconded this motion. The motion carried unopposed.

Victor Lamon Peters, Jr. made application for licensed appraiser and checked yes to a character question and was required, therefore, to appear before the Commission. Mr. Peters had pled Nolo Contendere to charges of battery/domestic abuse. He paid court cost of \$100 and was placed on probation for 20 months, was required to attend a batterers' intervention program, and was required to have no contact with the victim. While on probation he was arrested for breach of peace. Mr. Peters submitted this information in the form of a letter, and did not elect to attend the Commission meeting. Due to Commission policy for applicants for licensure to attend a Commission meeting to explain the affirmative character question on the application, it was recommended that Mr. Peters' application be denied. Mr. Pipkin made the motion not to grant approval of the application at this time. This motion was seconded by Mr. Flowers. The motion carried unopposed.

Lawrence Drake Moore made application for temporary practice permit and checked yes to a character questions and was required, therefore, to either appear before the Commission or make satisfactory explanation of why he was unable to attend and explain the matter that caused the character question on the application to be marked yes. The motion to approve this recommendation was made by Mr. Flowers. Mr. Bullington seconded this motion. The motion carried unopposed.

GENERAL BUSINESS

Rule Making Hearing Update

The rule making hearing is scheduled to be held on May 16, 2007 due to delays in the Legal Review and Submission.

Education Committee Report

Dr. Evans recommended that the Commission grant approval to all requested classes on the Education Report as written. Mr. Flowers motioned for approval of these classes. Mr. West seconded the motion. The motion carried unopposed.

EDUCATION COMMITTEE REPORT MARCH 12, 2007

Course Provider	Course Number	Course Name	Instructors	Credit Hours	Type
Appraisal Institute	1063	Analytics with the Site To Do Business	Leslie Sellers	7	CE
Appraisal Institute	1064	General Appraiser Site Valuation & Cost Approach	Harry Holtzhauer Maureen Mastroieni	30	Both
Dennis Badger	1060	ANSI Z765-2003	Dennis Badger Tom Viet	3.5	CE
	1061	Residential Design & Construction	Dennis Badger Tom Viet	3.5	CE

Individual Course Approval

Name	Course Provider	Course Name	Hours	Credit Type
Hubert E. Phillips	Appraisal Institute	Cost Feasibility, Highest & Best Use	7	CE
		Sales Comparison Approach	7	CE
		Income Approach & Partial Interests	7	CE
Betty Moses	HUD	FHA Appraisal Reform	7	CE

Instructors Only

Name	Course Provider	Course Name	Credit Hours	Type
Danny Wiley	Appraisal Institute Memphis Chapter	7 Hour USPAP Update	7	CE
Stephanie Coleman	Appraisal Institute Memphis Chapter	Scope of Work Business Practice & Ethics	7	CE
			7	CE
William T. Anglyn	Appraisal Institute	Forecasting Revenue	7	CE

Greater Tennessee Chapter				
James B. Atwood	Appraisal Institute Greater Tennessee Chapter	Quality Assurance in	7	CE
		Residential Appraisals Analysis & Highest & Best Use	7	CE
John T. Bosworth	Appraisal Institute Greater Tennessee Chapter	7 Hour National USPAP Update	7	CE
		Business Practice & Ethics	7	CE

Instructors Only

Name	Course Provider	Course Name	Credit Hours	Type
Richard Heyn	Appraisal Institute Greater Tennessee Chapter	Liability Management for Residential Appraisers	7	CE
Leslie Sellers	Appraisal Institute Greater Tennessee Chapter	Residential Market Analysis & Highest & Best Use	7	CE
Danny Wiley	Appraisal Institute Greater Tennessee Chapter	Business Practice & Ethics	7	CE
		7 Hour National USPAP Update	7	CE
		15 Hour National USPAP	15	QE

Baker, Donelson, Bearman, Caldwell & Berkowitz made request for an opinion from the Real Estate Appraiser Commission on if the affidavit and deposition testimony of Kevin O'Connell and Robert Downing violated our laws or rules by performing unlicensed appraisal review. The lawyer for the defendant, Michael Hoskins, requested that Nikole Urban, Administrative Director of the Real Estate Appraiser Commission, offer testimony in court to determine if these two persons were qualified to perform an appraisal review assignment if not licensed as real estate appraisers. In lieu of being subpoenaed to testify, this matter was presented to the Real Estate Appraiser Commission for an opinion on whether these affidavits and deposition testimony would constitute unlicensed appraisal review and be in violation of our laws and rules.

Mr. O'Connell is the president of the Nashville School of Real Estate and has been involved in the real estate industry for over 15 years, according to his affidavit. Mr. O'Connell teaches Real Estate pre-licensing courses and teaches the appraisal processes in those courses. He stated in this affidavit that, "based upon by review of these materials, it is my opinion that the defendant did not perform an adequate appraisal of the subject property and, in fact, was intentionally misleading in his conclusions." In Mr. O'Connell's testimony he reported that the appraised value was too high and that the comparable sales used were superior to the subject property. He further stated that the defendant used comparables from outside the subject's subdivision, when comparables within the subdivision were available, and that the subdivision which comparables were selected from were in terms of values in the market. He also stated in his affidavit that, "it is my opinion that the defendant's purpose was to perform an appraisal that supported a pre-determined appraised value of \$735,000." Mr. O'Connell also stated the defendant used improper adjustments by adjusting \$7,000 to \$8,000 for the difference between a one story and a two story dwelling and that, "a one story home is not that much more valuable than a two story." In his affidavit he concluded by stating that, "I would estimate that the value at which the defendant appraised the subject home deviated at least thirty-three percent (33%) from the property's market value at the time."

Mr. Downing is a real estate agent with approximately ten (10) years of experience in the subject's market area. Mr. Downing was also the former president of the Home Owners Association of appraised subject property's subdivision. In his affidavit, Mr. Downing stated that, "regardless of the quality, workmanship and amenities that the home had, it certainly would not have made the house worth much more than \$500,000 at that time." In his deposition he reported that the value of the subject provided by the defendant was, "way too high," and that, "based on my professional opinion, (the value of the subject was) no higher than \$530,000."

The Tennessee Real Estate Appraiser Commission's laws were discussed with relation to these two persons and their affidavit testimony and depositions. TCA 62-39-104 regarding applicability which reads, "This chapter does not apply to a real estate broker or sales person licensed by this state who, in the ordinary course of business, gives an opinion to a potential seller or third party as to the recommended listing price of real estate or an opinion to a potential purchaser or third party as to the recommended purchase price of real estate. This opinion as to the listing price or the purchase price shall not be referred to as an appraisal and no opinion shall be rendered as to the value of the real estate or real property." Also cited was the definition of "Review assignment", in TCA 62-39-102 which reads, "Review assignment means an analysis, opinion or conclusion prepared by a real estate appraiser that forms an opinion as to the adequacy and appropriateness of a valuation appraisal or an analysis assignment."

Mr. Bullington made the motion, based on the information presented, that these persons appear to have rendered an appraisal review by issuing an opinion on the value, or a direction in value, and, therefore, have violated the laws and rules applicable to such. Mr. Pipkin seconded the motion. The vote was Mr. Bratton: yes; Mr. Flowers: yes; Dr. Evans: no; Mr. West: no; Mr. Bullington: yes; Mr. Pipkin: yes; and Mr. Wade: yes; therefore the motion carried five to two. Dr. Evans motioned that complaints should be opened by the Real Estate Appraiser Commission in order to have these two persons respond to these allegations of unlicensed conduct in an appraisal review. Mr. Wade seconded the motion. The motion carried unopposed. Dr. Evans also motioned that a complaint be opened against the defendant, Mr. Patrick J. McGuigan, and a copy of the appraisal in question be obtained to investigate these allegation of over-valuing the subject property by using comparables from a superior subdivision. Mr. Wade seconded this motion. The motion carried unopposed.

LEGAL REPORT

Approval was granted and Mr. Headden signed consent orders for the following:

William Parrish – signed Consent Order agreeing that he committed USPAP violations in an appraisal of a golf course and paid \$2,000.00 in civil penalties.

Donald Ellis – signed Consent Order agreeing that he committed USPAP violations in an appraisal of a residential property appraised in 2004 and paid \$1,000.00 in civil penalties.

James Abernathy - signed Consent Order agreeing that he committed USPAP violations in an appraisal of a residential property appraised in 2006 in Hendersonville, TN and paid \$2,500.00 in civil penalties and agreed to take an additional 15-hour USPAP course.

Billy H. Whitfield - signed Consent Order admitting that he made mistakes affecting the cost approach and the adjustment in the sales comparison approach on a residential appraisal in 2004; and Respondent has agreed to take a Cost Approach seven-hour course with exam.

.....

1. Case No: L06-APP-RBS-2007047681 The reviewer was Mr. Wade.

The complaint was based on the appraiser not providing the client with the appraisal in a timely manner. The appraiser explained, in his response letter, why he did not provide the report in a timely manner and had delivered the appraisals to the client shortly after the complaint was filed. Mr. Wade recommended that we **dismiss** this complaint because the appraiser was not in violation of USPAP or the TREAC Rules. Prior History: None. The motion to approve this recommendation for dismissal was made by Mr. Pipkin and seconded by Mr. Bullington. The motion carried unopposed.

2. Case No: L06-APP-RBS-2007049241 The reviewer was Mr. Bratton.

No under-valuing of the subject property was found during the review of this complaint. The property was under purchase agreement from auctioning of the property for \$242,000 and the respondent appraised the property for \$255,000. Staffs review states that there seems to be adequate data within the appraisal report to support the value conclusion, however, there were errors found as noted by the complainant. The room count does not seem significant to the appraised value in this case. The fireplace count was misreported and the type was misreported. The neighborhood boundaries do not appear specific to the subject. There is missing information in the description of the subject condition sentence, and the building sketch reports there is a swimming pool that does not exits. In addition, it was noted by staff that he reports the quality as "average" in the sales comparison approach, but then uses "good" in the cost approach which is inconsistent. Also, there was no support given for the opinion of site value in the appraisal report. Prior History: 2 dismissed. Mr. Bratton recommended closing this complaint with a **Letter of Warning** regarding report of the property characteristics and applying information consistently throughout the appraisal report. Mr. Bullington made the motion to accept this recommendation. Mr. Flowers seconded that motion. The motion carried unopposed.

3. Case No: L07-APP-RBS-2007048081 The reviewer was Mr. Wade.

This complaint was filed against the CG and his trainee regarding a 2006 appraisal. Complainant stated the subject was a six-story "mixed-use building" with about 36,000 net rentable square feet and about 52,000 gross square feet. Complainant stated that it appears that the property is appraised as the sum of individual "condo" units. The respondent stated that the cost approach was not used due to difficulty in estimating the depreciation and effective age of the structure. The respondent also stated that there have been no comparable sales of multi-use buildings in downtown area with retail office and residential uses that have upscale finish similar to the subject and, therefore, the variety of comparable sales used in the Sales Comparison Approach accurately reflects the range of market prices being paid for retail office properties in this market. The respondent stated that no location adjustment was made to the comparables because all comparable sales were within a one mile radius of the subject. The respondent stated that as a multi-

use property with unique characteristics, it was difficult to isolate specific areas of the comparable sales to be adjusted. There was no prior complaint history. Mr. Wade made the recommendation that this complaint be closed with a **letter of caution** based on the fact that the techniques used to develop the opinion of value may be somewhat different from appraiser to appraiser, but that is a matter of judgment if it was done the best way.

3. Case No: L07-APP-RBS-2007047691

Complaint alleged Respondent appraised property without a license. The respondent stated that he started appraising in 1958 and when Tennessee required licensure, he received his license. The respondent stated that he renewed on time until December 15, 2005, approximately one month after his wife's death. Respondent stated he was depressed after his wife died and about five months later, realized that his license had lapsed; he applied for reinstatement, which was granted on September 22, 2006. During the time of the lapse in licensure, the respondent stated he was contacted by a former client's attorney who stated that the Court wanted a current valuation of the property and that the attorney asked the respondent to provide one. The respondent said, in his response letter, he told the attorney he was not licensed and asked the attorney's opinion, which was that he (the lawyer), thought that the respondent's opinion would satisfy the Court because the respondent was in the process of reinstatement. Prior History: None. Mr. Pipkin made a motion to **dismiss** this case due to the mitigating circumstances of the respondent at the time of his lapsed license. Mr. Bullington seconded that motion. The motion carried unopposed.

5. Case No: L07-APP-RBS-2007050981 The reviewer was Mr. Bullington.

The respondent appraised vacant land in a subdivision. Complaint alleges the respondent committed substantial errors of omission or commission that affected the assignment results, failed to identify the intended use, and violated TCA 62-39-302 by exceeding the limits of the type of property that a licensed residential appraiser may appraise. No approaches to value were included in the appraisal report, only a value indication referencing the sales comparison approach. The response acknowledges that the sales comparison approach was omitted and that negligence was committed in issuing the report without a supporting valuation approach. The respondent also acknowledges that the scope of work, the intended use, the source and definition of value, the property characteristics, the highest and best use, the sale and listing history, and the reconciliation were also not reporting in the appraisal report. In addition the respondent failed to include a signed certification, which he also acknowledges was negligent. Prior history: one closed with letter of warning regarding reporting inconsistencies; one dismissed; one closed. Mr. Bullington made a recommendation for approval of **formal hearing** and **informal conference** and also to authorize for a **consent order** with classes and civil penalty. Mr. Pipkin made the motion to approve this recommendation. Mr. West seconded the motion. The motion carried unanimously.

EXPERIENCE INTERVIEWS

Jeremy Skalet, made application to upgrade from a registered trainee to a certified residential appraiser. Mr. Bullington was the reviewer and recommended approval. Mr. Pipkin made the motion to accept the recommendation and Mr. West seconded the motion. The motion carried unopposed.

Hunter Thomas, made application to upgrade from a registered trainee to a certified residential appraiser. Mr. Bullington was the reviewer and recommended approval. Mr. Pipkin made the motion to accept the recommendation and Mr. West seconded the motion. The motion carried unopposed.

Jared Smith, made application to upgrade from a registered trainee to a certified residential appraiser. Mr. Bullington was the reviewer and recommended approval. Mr. Pipkin made the motion to accept the recommendation and Mr. West seconded the motion. The motion carried unopposed.

Glenn Trotter, made application for licensed appraiser; he was a licensed appraiser from another state that does not reciprocate with Tennessee. Mr. Pipkin was the reviewer and recommended approval. Mr. Bratton made the motion for approval; Mr. Bullington seconded the motion. The motion carried unopposed.

Jerry Michael Poindexter, made application to upgrade from a registered trainee to a licensed appraiser. Mr. Pipkin was the reviewer and recommended approval. Mr. Bratton made the motion for approval; Mr. Bullington seconded the motion. The motion carried unopposed.

Amanda McDevitt, made application to upgrade from a registered trainee to a certified residential appraiser. Mr. Pipkin was the reviewer and recommended approval. Mr. Bratton made the motion for approval; Mr. Bullington seconded the motion. The motion carried unopposed. Mr. Flowers recused from vote because Ms. McDevitt was his trainee.

Noma Wood, made application to upgrade from a registered trainee to a certified residential appraiser. Mr. Flowers was the reviewer and stated her appraisals represented excellent work and recommended approval. Mr. Bratton made the motion for approval; Mr. Bullington seconded the motion. The motion carried unopposed.

Melanie Charlotte, made application to upgrade from a registered trainee to a licensed appraiser. Mr. Flowers was the reviewer. He stated he found some problems with the depreciation in the appraisals and recommended she take a course that emphasized depreciation techniques; however, he recommended approval of her request. Mr. Pipkin made the motion to accept the recommendation and Mr. Wade seconded the motion. The motion carried unopposed. Mr. Bratton recused from vote because he knows the applicant.

Richard Pangelinan, made application to upgrade from a licensed appraiser to a certified residential appraiser. Mr. Wade was the reviewer and recommended approval. Mr. Pipkin made the motion to accept the recommendation and Mr. Bullington seconded the motion. The motion carried unopposed.

Being no further business, meeting was adjourned at 12:30 p.m.

Nikole Urban, Administrative Director

Marc Headden, Chairman